

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:18-cv-00300-MR-WCM**

**LEAH MORAN, individually and as
executrix for the Estate of HEATHER
GRACE BOONE LEVITSKY,**

Plaintiff,

vs.

ORDER

**POLK COUNTY, POLK COUNTY
SHERIFF'S DEPARTMENT,
TRANSYLVANIA COUNTY
DETENTION CENTER, DONALD
HILL, in his individual and official
capacities, JOSHUA J. KUJAWA,
in his individual capacity, SHELLEY
STROUP, in her individual capacity,
KYLE PASSMORE, in his individual
capacity, JERRY MANN, in his
individual capacity, MYLES B.
McCRARY, in his individual capacity,
ROBBIE WORTHY, in his individual
capacity, DAVID A. MAHONEY, in
his official and individual capacities,
NICHOLE BLACKWELL, in her
individual capacity, UNKNOWN
JOHN DOE EMPLOYEE OF
TRANSYLVANIA COUNTY, in his
individual capacity, and UNKNOWN
EMPLOYEES OF TRANSYLVANIA
COUNTY DETENTION CENTER, in
their individual capacities,**

Defendants.

THIS MATTER is before the Court on the Motion to Dismiss filed by Defendants Polk County, Transylvania County, Polk County Sheriff's Office, Transylvania County Detention Center, Donald Hill, David Mahoney, Joshua J. Kujawa, Shelley Stroup, Kyle Passmore, Jerry Mann, and Nichole Blackwell ("Sheriff and County Defendants") [Doc. 27]; the Motion to Dismiss filed by Defendant Myles B. McCrary [Doc. 29]; the Motion to Dismiss filed by Defendant Robbie Worthy [Doc. 36]; and the Magistrate Judge's Memorandum and Recommendation [Doc.40] regarding the disposition of those motions.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Defendants' motions and to submit a recommendation for their disposition.

On September 3, 2019, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the Defendants' motions. [Doc. 40]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no

written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that the Motion to Dismiss filed by the Sheriff and County Defendants be granted in part and denied in part; that the Motion to Dismiss filed by Defendant McCrary be granted; and that the Motion to Dismiss filed by Defendant Worthy be granted.

IT IS, THEREFORE, ORDERED as follows:

(1) The Memorandum and Recommendation [Doc. 40] is **ACCEPTED**;

(2) The Motion to Dismiss filed by Defendants Polk County, Transylvania County, Polk County Sheriff's Office, Transylvania County Detention Center, Donald Hill, David Mahoney, Joshua J. Kujawa, Shelley Stroup, Kyle Passmore, Jerry Mann, and Nichole Blackwell ("Sheriff and County Defendants") [Doc. 27] is **GRANTED IN PART** and **DENIED IN PART** as follows:

a. With respect to Plaintiff's First Claim (Cruel and Unusual Punishment):

i. The Motion is **GRANTED** as to the following Defendants in their individual capacities: Donald Hill, David A. Mahoney, Joshua J. Kujawa, Shelley Stroup, and Kyle Passmore, and such claim is hereby **DISMISSED WITH PREJUDICE** as to these Defendants; and

ii. The Motion is **DENIED** as to Defendant Jerry Mann in his individual capacity.

b. With respect to Plaintiff's Second Claim (Right to Familial Relationship), the Motion is **GRANTED** as to the following Defendants: Polk County, Transylvania County, Polk County Sheriff's Office, Transylvania County Detention Center, Donald Hill (in his official and individual capacities), David A. Mahoney (in his official and individual capacities), Joshua J. Kujawa, Shelley Stroup, Kyle Passmore, Jerry Mann, and Nichole Blackwell, and such claim is hereby **DISMISSED WITH PREJUDICE** with respect to these Defendants.

c. With respect to Plaintiff's Third Claim (Monell):

i. The Motion is **GRANTED** as to the following Defendants: Polk County Sheriff's Office, Transylvania County Detention Center, and Donald Hill in his official capacity, and such claim is hereby **DISMISSED WITH PREJUDICE** with respect to these Defendants; and

ii. The Motion is **DENIED** as to Polk County and Transylvania County.

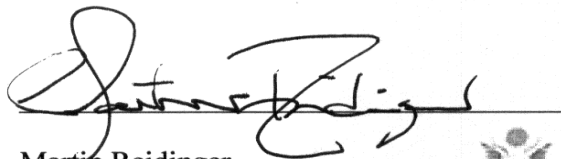
d. With respect to Plaintiff's Fourth Claim (Wrongful Death), the Motion be **GRANTED** as to the following Defendants: Donald Hill (in his individual capacity, David A. Mahoney (in his individual capacity), Joshua J. Kujawa, Shelley Stroup, Kyle Passmore, and Jerry Mann, and such claim is hereby **DISMISSED WITH PREJUDICE** with respect to these Defendants.

(3) The Motion to Dismiss filed by Defendant Myles B. McCrary [Doc. 29] is **GRANTED**, and all claims asserted against Defendant McCrary are hereby **DISMISSED**; and

(4) The Motion to Dismiss filed by Defendant Robbie Worthy [Doc. 36] is **GRANTED**, and all claims asserted against Defendant Worthy are hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Signed: September 20, 2019


Martin Reidinger
United States District Judge

